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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/478,071

01/03/2000

LEE ROY COPELAND

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39602 7590 07/12/2007
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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

07/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/478,071

Applicant(s)

COPELAND ET AL.

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-21, 35-49, 53, 57, 59, 61, 62, 66 and 70-72 is/are pending in the application.
 - 4a) Of the above claim(s) 14-21 and 35-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48, 49, 53, 57, 59, 61, 62, 66 and 70-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 14-21, 35-49, 53, 57, 59, 61, 62, 66 and 70-72 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim. 14-21, 35-47 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on paper # 7

This application contains claim 14-21, 35-47 drawn to an invention nonelected with traverse in the reply filed on paper # 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144)

See MPEP § 821.01.

Claim Rejections - 35 USC § 112

Claim 48, 49, 53, 57, 59, 61, 62, 66, 70-72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language is confusing; a straightforward reading leads one to believe there is 10-55% unsaponifiable, but there is not; the specification states 6% only of unsaponifiables renders the term unsaponifiables valid. So what does 10-55% mean? 55% thus has only to require 6% to be unsaponifiable. Importantly, it is not stated what the 10-55% is a % of. The basis is absent. Neither can we determine the basis of the 45-90%, or the 45% of the jojoba oil. Also, the 10-55% and 45-90% are not stated to be of jojoba oil; they correspond to saponification products of jojoba oil. It is unclear what % of the composition is jojoba oil, and what % is other oil/s or fats. If jojoba oil is the portion of the composition that is 10-55% non-polar and 45-90% polar (claim 48) then that should

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be stated; as should the basis-the total composition; the unsaponifiables, the jojoba oil or what, and by volume, weight or ?

Although patentable weight over the prior art might not be afforded. A product by process rendering of claims 48 and 61 might provide some clarity now lacking. In particular, insert "that" after saponification at line 4 of claim 48, and put back the deleted material following lines 4 and 5, and then delete "in situ".

The problem of the composition comprising 10-55% unsaponifiables would remain however. Is the 55% really only required to be 6% or is it 55%?

In claim 61, "long chain" should be quantified.

Claim Rejections - 35 USC § 102

Claim 48, 49, 53, 57, 69, 61, 62, and 70-72 stand rejected under 35 U.S.C. 102(b) as being anticipated KOULBANIS et al 4324802

New claims are re-written and rejected, previously presented claims.

The instant claim language is not seen to preclude other saponification products than those from jojoba oil.

Claim 61, 62, 66, 70-72 stand rejected under 35 U.S.C. 102(b) as being anticipated MOY 5928659

New claims are re-written and rejected, previously presented claims.

Jojoba oil is present, thus, would have 45% long chain carbon. The tandem reaction products, as applied to avocado oil, also correspond to the products one would obtain from other oils, inclusive of jojoba.

Claim 48, 49, 53, 61, 62, 66 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WELLS-2450403

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Jobba oil, thus, meeting the criteria of the instant claims, is heated and saponified with sulfur, and so would result in a composition, suitable to provide substantive benefits upon application to skin, if one so wished, having 10-55% non-polar unsaponifiables and 45-90% polar hydrophilic salts. Added emollients include mineral oil (column 6, example 8).

Response to Arguments

Applicant's arguments filed 2/1/07 have been fully considered but they are not persuasive. Arguments are that prior art fails to perform in situ production, but the instant language is not seen as prohibitive of other products. Jobba oil is present in MOY and KOULBAIN's and so would meet the instant descriptive components of jobba oil prior to saponification.

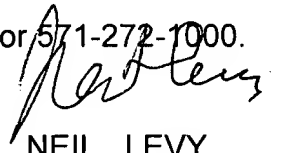
Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY
Primary Examiner
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